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Chairman: Mr. ZARIF (Islamic Republic of Iran)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 126: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (A/47/324)

1. Mr. FLEISCHHAUER (Under-Secretary-General for Legal Affairs, The Legal Counsel) introduced the report of the Secretary-General on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (A/47/324). Section I of the report recalled that the General Assembly, in resolution 45/38, had requested the Secretary-General to submit to it at its forty-seventh session a report on the status of the additional Protocols based on information received from Member States. Section II reproduced that information as provided by 10 Member States. Annexed to the report was the list of States parties to the Protocols as at 2 July 1992. The list had been communicated to the Secretariat by Switzerland, depositary of the Protocols.

2. Mr. ORDZHONIKIDZE (Russian Federation) said that the Russian Federation was taking part in the work of the General Assembly for the first time as a democratic State. As the successor to the Union of Soviet Socialist Republics, Russia was a party to the Geneva Conventions of 1949 and the additional Protocols of 1977. It intended to continue the long humanistic traditions of Russian diplomacy, on whose initiative the Declaration on the Prohibition of the Use in War of Explosives and Explosive Shells, known as the "St. Petersburg Declaration", had been adopted in 1868. That instrument had been one of the first to set standards for contemporary international humanitarian law applicable in times of armed conflict. It had also been on Russia's initiative that the first and second Hague Peace Conferences had been held.

3. Although the cold war had ended and the threat of a new world war seemed to have dissipated, recently the number of armed conflicts had been increasing, instead of decreasing. It went without saying that the chief aim of United Nations activities should be to ward off conflict and prevent disputes between States from degenerating into armed confrontation. It was precisely that objective to which the concept of preventive diplomacy was intended to respond. However, as long as the United Nations and the regional organizations were unsuccessful in preventing conflicts from breaking out, the international community would need to reinforce respect for international humanitarian law and ensure that the parties in dispute respected its principles and prescriptions.

4. The question of the universality of the additional Protocols had therefore lost none of its immediacy. The number of States which had ratified or acceded to Protocol II was considerably smaller than the number of States parties to Protocol I. It would appear, however, that the absence of enthusiasm in regard to Protocol II, as well as the generally slow pace of

(Mr. Ordzhonikidze, Russian Federation)

ratification and acceptance of both instruments, was due rather to political considerations than to the inadequacy of their formulation from the point of view of international humanitarian law.

5. In point of fact, it was the idea that State sovereignty did not authorize a Government to employ extreme measures against its opponents, or vice versa, which was having difficulty in gaining acceptance. Even in a civil war - an internal affair if ever there was one - the international community was entitled to require the State concerned as well as the insurgent forces to respect the universally accepted norms of international law and a minimum of humanitarian standards.

6. If one looked at international humanitarian law, one could but note the failure to apply its norms and principles rigorously. In that connection, the Fact-finding Commission which had just been set up, which was politically neutral, could do a great deal to strengthen respect for law in the regions where there was conflict. If there were more States which recognized its competence, humanitarian law would be more consistently respected.

7. The additional Protocols, and international humanitarian law in general, must be made better known, which the Protocols themselves in fact required the States parties to them to do. Not only must the military, and the paramilitary formations and their commanders, be informed but also broad sectors of the population, in particular the people directly concerned with the running of the State. In that way, respect for humanitarian norms and principles binding in any situation where it would make it possible to lessen conflict and hasten a settlement could be firmly based in the collective consciousness. That was the aim of the Russian Federation, supported by the International Committee of the Red Cross, whose activities on behalf of the development and codification of international law and in regard to information deserved recognition. In order to enable law to play a more decisive role in the consolidation of humanitarian principles, all States must become parties to the Geneva Conventions and the additional Protocols.

8. Mr. RYDBERG (Sweden), speaking on behalf of the Nordic countries, noted with satisfaction that a number of new Member States (Croatia, Kazakhstan, Latvia, Slovenia and Turkmenistan) had ratified the Protocols; he believed universal acceptance of the Protocols would be only a matter of time. In addition to codifying and specifying customary law, the Protocols contained provisions representing a progressive development of international law. Their codifying function had been amply demonstrated at the time of the Iraqi invasion of Kuwait, when many provisions of Protocol I had been cited as valid rules of humanitarian law, in particular in regard to protection of the environment. In that connection, the Nordic countries noted with satisfaction that the question of the protection of the environment in times of armed conflict had been included in the agenda of the current session.

(Mr. Rydberg, Sweden)

9. The Nordic countries were pleased that the International Fact-finding Commission, established on 25 June 1991 pursuant to article 90 of Protocol I, had become operational. Its mere existence was likely to strengthen the implementation of humanitarian law in general, and of the Geneva Conventions and their additional Protocols in particular. One of the Commission's primary tasks was, of course, to examine alleged grave breaches or serious violations of the Conventions and the Protocols, but it should also facilitate, through its good offices, the restoration of respect for their provisions. At the request of a party to a conflict, it could also institute an inquiry. It was thus entrusted with both preventive and reparative tasks.

10. In the view of the Nordic countries, there was no obstacle to making use of the Commission in connection with the current conflict in former Yugoslavia, where grave breaches had occurred, particularly in the form of attacks against civilian targets and the destruction of cultural property. Two States in the region had, moreover, made the declaration provided for in article 90 of Protocol I.

11. Currently, more and more States were acceding to the additional Protocols, yet the number of flagrant violations of their provisions and of humanitarian law was also on the increase. It was thus not sufficient for States to become parties to Protocol I: its provisions must also be respected and implemented. In that context too, the Commission could play an important role, and the Nordic countries believed that an enhanced acceptance of article 90 would strengthen the authority of the Commission and ensure that humanitarian law was more rigorously implemented. The importance of fact-finding activities had also been underlined by the General Assembly in its resolution 46/59, and by the Secretary-General in his report entitled "An agenda for peace" (A/47/277-S/24111).

12. While appealing to all States parties to comply with the obligations they had undertaken by acceding to the Geneva Conventions and the additional Protocols, the Nordic countries wished to remind those countries which had not yet acceded that most of the provisions of the Protocols reflected customary law from which derogations could never be justified.

13. Mr. STRAUSS (Canada) said that the 1977 additional Protocols, like the 1949 Geneva Conventions, represented a landmark in the development of international humanitarian law in that they defined in specific and comprehensive terms the obligations of States to protect those who were most vulnerable during periods of armed conflict. Canada, which had signed the Protocols at the end of the 1977 Conference and had ratified them in 1990, accordingly hoped that all States would accede to them without delay, in the light of the international situation and, more particularly, the events in former Yugoslavia.

(Mr. Strauss, Canada)

14. Canada, which had included the provisions of the Protocols in its military manuals, invited other countries to follow suit, and called upon those currently involved in armed conflict, whether international or not, to comply scrupulously with their obligations under the additional Protocols. It also urged all countries to make the declaration provided for in article 90 of Protocol I, as Canada had done at the time of ratification, thereby recognizing the competence of the International Fact-finding Commission to inquire into allegations of grave breaches of the Geneva Conventions and Protocol I.

15. Mr. CALERO RODRIGUES (Brazil) said that the current international situation highlighted the essential role of such legal instruments as the 1949 Geneva Conventions and their additional Protocols in situations of armed conflict. The two additional Protocols, in particular, had substantially strengthened the provisions of the 1949 Conventions by reaffirming and reinforcing the basic rights of civilian victims. His delegation therefore considered that all nations or groups involved in an armed conflict must be held responsible for any violation of the rules of international law governing the protection of civilians in times of armed conflict, whether international or not.

16. For its part, Brazil had stated its intention to accede to the two Protocols, which would enter into force in its territory from November 1992. Furthermore, the Brazilian Government was carefully studying the possibility of making the declaration provided under article 90 of Protocol I with regard to the competence of the International Fact-finding Commission.

17. In that connection, he wished to point out the paramount importance of the International Committee of the Red Cross in all situations of armed conflict in ensuring scrupulous respect for the rules of international humanitarian law.

18. Mr. NEUHAUS (Australia) said that the resurgence of ancient ethnic disputes almost everywhere in the world made it all the more necessary and urgent to extend and accept the rules of international humanitarian law as affirmed in the Geneva Conventions and their additional Protocols.

19. Australia had deposited the instruments of ratification of the two additional Protocols on 12 June 1991; on 23 September 1992 it had deposited the instrument containing the declaration in which it recognized the competence of the International Fact-finding Commission pursuant to article 90 of Protocol I. In its view, the Protocols had the merit of enhancing the protection of the civilian population in times of armed conflict without placing unacceptable restraints on the conduct of military operations. It regarded the International Fact-finding Commission as an important mechanism for ensuring respect for the norms of international humanitarian law, and it hoped that the Commission would publicize any grave breaches brought to its notice.

(Mr. Neuhaus, Australia)

20. In complying with the obligation of States parties to disseminate the text of the Conventions and their additional Protocols as widely as possible, his Government was working closely with the Australian Red Cross Society. It had established two committees, one of which was responsible for disseminating the text of the Geneva Conventions, while the other was called upon to promote the teaching of international humanitarian law. The Australian Defence Force, which happily was not involved in any armed conflict and was cooperating actively in peace-keeping activities, had taken concrete steps to promote respect for international humanitarian law, both through the education of military personnel and in the conduct of operations.

21. Mr. ADANK (New Zealand) said that the tragic events in the Balkans had underlined the need to ensure that the international rules designed to minimize the suffering caused by warfare were universally accepted, implemented and observed. For that reason, his delegation welcomed the report of the Secretary-General on the status of the Protocols additional to the 1949 Geneva Conventions on the Protection of the Victims of Armed Conflicts (A/47/324). The Protocols played a central role in protecting the victims of both international and civil wars.

22. New Zealand had become a party to the Protocols and had also recognized the competence of the International Fact-finding Commission established in 1991. It expected the new body to play an important role in investigating violations of the Conventions and of Protocol I. In that connection, it was pleased to note that a New Zealand expert in humanitarian law who had represented New Zealand in the negotiations on the additional Protocols was one of the 15 members elected to serve on the Commission.

23. Although the Protocols incorporated the rules of customary international law, New Zealand considered that States would be making an important contribution to the further strengthening of the international humanitarian legal regime by becoming Parties to the Protocols at an early date.

24. Since the issuance of the 1990 report of the Secretary-General, 11 further States had become parties to the Protocols. In the same period, the international community had expanded by 20 States. For that reason, New Zealand urged all States which had not yet done so to take the necessary steps to become parties to the Protocols or, where appropriate, to confirm their intention to be bound by their provisions and to recognize the competence of the International Fact-finding Commission.

25. Ms. KEHRER (Austria) said that conflicts unfortunately continued to take place in various parts of the world, unabated by legal constraints and ethical precepts. The perpetrators of acts of brutality committed in the course of those conflicts appeared to act with impunity, a situation which undermined the authority of the instruments of humanitarian law adopted by the international community, namely the 1949 Geneva Conventions and the relevant additional Protocols. If respect for those instruments was not restored, the

(Ms. Kehrer, Austria)

entire system would crumble. The very fact that those instruments had gained almost universal acceptance did not suffice. All breaches should be deplored, as should the absence of an international penal system that would sanction grave violations of humanitarian law. Austria supported all efforts aimed at establishing an international tribunal competent to deal with such crimes. The Sixth Committee would have the opportunity to consider the proposals submitted in that regard when it considered the draft Code of Crimes against the Peace and Security of Mankind.

26. The fact that the International Fact-finding Commission had been created and that its competence had been recognized by a sufficient number of States should be welcomed. It was now capable of fulfilling the mandate conferred upon it under Protocol I.

27. The importance of what was at stake warranted unrelenting efforts to ensure that the rules of humanitarian law were respected. In that spirit, Austria had urged the new European States to ratify the Geneva Conventions and their additional Protocols, and hoped that the general acceptance of those instruments would be more than a mere formality.

28. Mr. HAMAI (Algeria) said that the additional Protocols represented substantial progress in the constant effort to do more to protect individuals during armed conflicts, by extending the scope of the Conventions and by codifying and limiting the methods and means of warfare. He commended the role played by the Swiss Government and the International Committee of the Red Cross in drawing up those instruments.

29. The ratification by all States of those instruments, although necessary, did not constitute an end in itself. Unfortunately, current events provided tragic examples of systematic and flagrant violations of the most basic provisions of international humanitarian law. Again, Protocol I offered an appropriate solution by providing for the establishment of an international monitoring mechanism: the Fact-finding Commission.

30. His delegation was pleased that the number of States parties to the Protocols had increased considerably since the forty-fifth session of the General Assembly, and that the fateful number of 20 declarations accepting the competence of the Fact-finding Commission had been exceeded. As a result, all States having subscribed to that declaration had been able to meet and elect the 15 members of the Commission.

31. In acceding to Protocols I and II and accepting the monitoring mechanism provided for under article 90 of Protocol I, Algeria was merely confirming its constant respect for humanitarian law, which it regarded as a principal method of safeguarding human dignity in time of war.

32. Mrs. ZAZOPULOS (Chile) said that her country had deposited the instruments ratifying the two Protocols additional to the 1949 Geneva Conventions and had made the declaration provided for under article 90 of Protocol I concerning recognition of the competence of the International Fact-finding Commission. The two Protocols had entered into force in Chilean territory on 24 October 1991 and the decree of promulgation had been published in the Official Gazette on 28 October 1991.

33. Mr. MOTSYK (Ukraine) said that Ukraine had ratified the two Protocols additional to the 1949 Geneva Conventions and relating to the protection of victims of international armed conflicts. Furthermore, being aware that the establishment of mechanisms for monitoring the implementation of international agreements was an important component of the international legal order, Ukraine had recognized the competence of the International Fact-finding Commission.

34. Although the United Nations Charter prohibited resort to the threat or use of force in international relations, various conflicts bringing enormous suffering were still breaking out throughout the world. The international community should spare no effort to end those conflicts and attenuate their consequences. Given recent events, the 1949 Geneva Conventions and their additional Protocols were of decisive importance for the provision of protection during armed conflict and for the coordination and clarification of customary law. As a result of the basic provisions of the Geneva Conventions, amended and supplemented by those of Protocol I, particularly concerning protection of the environment and of dangerous installations such as nuclear electrical generating stations, international and internal conflicts were being settled in accordance with international law. It should be recalled that, pursuant to article 85, paragraph 5, of Protocol I, serious violations of the Conventions and the Protocol were regarded as war crimes.

35. Believing that ratification of the Protocols by the largest possible number of States would lead to more humane international relations, his delegation expressed the hope that those instruments would soon acquire a universal character. As it was possible that armed conflict could occur between parties not yet having ratified the additional Protocols, arrangements should be made to enable such parties to declare their intention or conclude an agreement with a view to recognizing the provisions of the additional Protocols before ratifying them.

36. Ukraine attached great importance to the International Fact-finding Commission and invited those States which had not already done so to recognize its competence.

37. Mr. GODET (Observer for Switzerland) said that pursuant to article 90 of Protocol I to the 1949 Geneva Conventions relating to the protection of victims of armed conflicts, the High Contracting Parties to the Protocol could recognize the competence of an International Fact-Finding Commission to investigate allegations of serious violations of the Geneva Conventions and

(Mr. Godet, Observer, Switzerland)

the Protocol. That optional mechanism was somewhat similar to that provided for under article 36, paragraph 2, of the Statute of the International Court of Justice concerning the compulsory jurisdiction of the Court, except that the Commission was solely an investigating body.

38. Once the number of declarations required to establish the Commission had been attained in 1990, the 15 members of the Commission had been elected. The Commission had become operational in 1992 and had its headquarters at Bern (Switzerland). As depositary of the Geneva Conventions and the additional Protocols, the Swiss Government also provided administrative facilities for the Commission, pursuant to article 90 of Protocol I.

39. The Commission was competent to conduct investigations in accordance with the provisions of article 90 of the Protocol, and to facilitate, through its good offices, the return by the parties to an armed conflict to compliance with the provisions of the Geneva Conventions and the Protocol. In that context, the Commission was ready, in cases of conflict, to cooperate with the bodies responsible for ensuring compliance with international humanitarian law. In the spirit of article 89 of the Protocol, it would particularly appreciate it if the United Nations could remind the parties involved of the availability of the Commission.

40. As a mechanism intended to promote compliance with international humanitarian law by way of investigation and good offices, the Commission was convinced that it would be even more effective if a large number of States recognized its competence by making the declaration provided for under article 90 of Protocol I. For the Commission, that declaration represented a commitment on the part of the High Contracting Parties to respect and ensure respect for the Geneva Conventions and the Protocol and to alleviate the suffering of the victims of armed conflicts. Switzerland made that appeal, both as the depositary State and as a party to the Geneva Conventions and their additional Protocols.

41. Mr. FALLET (International Committee of the Red Cross) emphasized the vital role which international humanitarian law continued to play in time of armed conflicts. The four Geneva Conventions already provided legal guarantees, but the additional Protocols considerably enhanced the protection of human life by reaffirming and strengthening the basic rules for the conduct of hostilities. In addition, the importance of the principles and criteria which they set out for assistance and relief and for the protection of the environment in time of armed conflicts could not be overemphasized. Moreover, the alarming increase in non-international conflicts sadly underlined the importance of Protocol II.

42. The International Committee of the Red Cross invited those States which had not yet done so to ratify the two additional Protocols and to recognize the competence of the International Fact-finding Commission. Humanitarian assistance and protection were clearly no substitute for negotiation and

(Mr. Fallet)

dialogue in the search for political solutions, but they could further peace initiatives by bringing adversaries together to try and solve humanitarian problems. Conversely, by neglecting humanitarian issues and failing to condemn violations of international humanitarian law, conflicts were exacerbated and prolonged.

43. In conclusion, he said he was convinced of the essential importance of adhering to and implementing the Geneva Conventions and their additional Protocols from the point of view of peace-keeping, peacemaking and peace-building.

The meeting rose at 11.30 a.m.